

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALICE ALKHAS,

Plaintiff-Appellant,

v

ST. JOSEPH'S MERCY HOSPITAL PONTIAC,  
d/b/a TRINITY HEALTH MICHIGAN,

Defendant-Appellee.

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UNPUBLISHED

June 21, 2005

No. 252687

Oakland Circuit Court

LC No. 03-046882-NZ

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's four-year-old granddaughter, Katrina, who was a patient in defendant's facility, was hooked to several tubes and wires which hung from a rolling pole. Plaintiff carried Katrina to the bathroom, while a nurse walked behind them with the pole. As plaintiff attempted to exit the bathroom to answer the telephone, she tripped on the tubes and wires that stretched from Katrina's body across the doorway to the pole and fell to the floor, sustaining injuries.

Plaintiff filed suit alleging that defendant negligently failed to maintain its premises in a reasonably safe condition and to warn of the unsafe condition, and that the nurse, identified only as "Jane Roe," negligently arranged the tubes and wires. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that it owed no duty to plaintiff because the condition was open and obvious, and that no special aspects made it unreasonably dangerous in spite of its open and obvious nature. The trial court granted the motion, finding that no issue of fact existed as to whether the condition was open and obvious. The trial court acknowledged that plaintiff had learned the identity of the nurse only two days earlier, but declined to delay its ruling, concluding that any information that could be supplied by the nurse would not change the factual scenario on which the complaint and motion were based.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).<sup>1</sup>

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id.* at 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). If special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

We affirm. Plaintiff acknowledged that she was aware that tubes and wires were attached to Katrina's body and hung from a rolling pole, and admitted that when she carried Katrina to the bathroom, she was aware that the nurse followed them with the pole. Plaintiff conceded that when she attempted to exit the bathroom, she did not watch where she was stepping. The fact that plaintiff did not see the tubes and wires stretched across the doorway is irrelevant. *Novotney, supra* at 477. It is reasonable to conclude that plaintiff would not have been injured had she been watching where she was walking. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999). Plaintiff did not establish an issue of fact as to whether the condition was open and obvious.

Plaintiff failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious nature. *Lugo, supra*. Had plaintiff simply watched her step, any risk of harm would have been obviated. *Spagnuolo v Rudds #2, Inc*, 221 Mich App 358, 360; 561 NW2d 500 (1997).

A motion for summary disposition is premature if granted before discovery on a disputed issue is complete, *Townsend v Chase Manhattan Mortgage Corp*, 254 Mich App 133, 140; 657 NW2d 741 (2002), but summary disposition is appropriate if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). Plaintiff has not shown that any information that could have been obtained by deposing the nurse would have created an issue of fact. Summary disposition was proper.

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<sup>1</sup> We assume that the trial court granted summary disposition pursuant to MCR 2.116(C)(10). *Detroit News, Inc v Policemen & Firemen Retirement System*, 252 Mich App 59, 66; 651 NW2d 127 (2002).

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello